

Message Text

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PAGE 01 USUN N 02602 160038Z

ACTION IO-14

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L-03 NSAE-00 NSC-05 PA-01 PRS-01 SP-02 SS-15

USIA-06 AF-10 ARA-10 EA-07 EUR-12 NEA-10 DHA-02

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TO SECSTATE WASHDC 4882

C O N F I D E N T I A L USUN 2602

E.O. 11652: GDS

TAGS: PFOR, UN, GW

SUBJECT: AD HOC COMMITTEE ON THE TAKING HOSTAGES

SUMMARY: MEXICO HAS PROPOSED INCLUSION OF LANGUAGE IN DRAFT CONVENTION WHICH WOULD LIMIT OPERATION OF CONVENTION TO SITUATION OTHER THAN ARMED CONFLICTS. AIM IS TO CIRCUMVENT ISSUE OF NATIONAL LIBERATION MOVEMENTS (NLM'S). DEPARTMENT'S VIEWS ON PROPOSED TEXT REQUESTED. END SUMMARY.

1. ICAZA (MEXICO) HAS STRONGLY SUPPORTED VIEW THAT PROTOCOL 1 TO 1949 GENEVA CONVENTION ESTABLISHED THAT NLM'S CANNOT TAKE HOSTAGES AND INDIVIDUALS WHO DO SHOULD BE PROSECUTED OR EXTRADITED. ICAZA ARGUES THAT MOTIVE OF PERSON TAKING HOSTAGES IS IRRELEVANT.

2. TO FINESSE SENSITIVE ISSUE OF COVERAGE NLM'S IN HOSTAGES CONVENTION, MEXICO HAS SUGGESTED INCLUSION OF FOLLOWING LANGUAGE IN DRAFT CONVENTION:

"FOR THE PURPOSES OF THIS CONVENTION, THE TERM 'TAKING OF HOSTAGES' SHALL NOT INCLUDE ANY ACT OR ACTS COVERED BY THE RULES OF INTERNATIONAL LAW APPLICABLE TO ARMED CONFLICTS, INCLUDING CONFLICTS IN WHICH PEOPLES ARE FIGHTING AGAINST COLONIAL DOMINATION
CONFIDENTIAL

CONFIDENTIAL

PAGE 02 USUN N 02602 160038Z

AND FOREIGN OCCUPATION AND AGAINST RACIST REGIMES, IN THE EXERCISE OF THE RIGHT OF PEOPLES TO SELF-DETERMINATION EMBODIED IN THE CHARTER OF THE UNITED NATIONS AND THE DECLARATION OF PRINCIPLES OF INTERNATIONAL LAW CONCERNING FRIENDLY RELATIONS AND CO-OPERATION AMONG STATES IN ACCORDANCE WITH THE CHARTER OF THE UNITED NATIONS."

3. LANGUAGE WOULD APPEAR TO ACCOMPLISH MEXICAN GOAL OF EXCLUDING FROM AMBIT OF THIS CONVENTION SITUATIONS COVERED BY OTHER CONVENTIONS WHILE NOT CREATING LEGAL LOOPHOLE FOR NLM'S WHEN HOSTAGES CONVENTION AND PROTOCOL 1 READ TOGETHER.

4. LANGUAGE APPEARS TO EXCLUDE NLM'S AND THEREFORE MAY BE POLITICALLY ACCEPTABLE TO MOST ARABS AND AFRICANS. TANZANIA AND ALGERIA HAVE, HOWEVER, QUESTIONED THE PROPOSAL AND SUGGESTED DELETION OF THE WORDS "COVERED BY THE RULES OF INTERNATIONAL LAW APPLICABLE TO ARMED CONFLICT."

5. DELEGATION HAS MADE NO EXPLICIT JUDGMENT ON MEXICAN PROPOSAL BUT HAS IMPLIED DIFFICULTY WITH IT BY NOTING INTERNATIONAL LAW NOT SAME AS STATE LAW IN THAT ONE IS NOT OPERATING WITHIN A COMPREHENSIVE CODE, THAT PARTIES TO SOME CONVENTIONS MAY NOT BE PARTIES TO OTHER CONVENTIONS; THAT ABSENCE OF ANY SUCH APPROACH IN HAGUE, MONTREAL AND PROTECTION OF DIPLOMATS CONVENTIONS ARGUES FOR UNNECESSARY NATURE OF ANY SUCH APPROACH.

6. WE MOREOVER RECOGNIZE VIRTUALLY INSURMOUNTABLE PRESENTATIONAL PROBLEMS OF ACQUIESCING IN LANGUAGE WHICH EXPRESSLY EXCLUDES LIBERATION MOVEMENTS AND THUS APPEARS TO AVERAGE READER AS SANCTIONING OF SUCH CONDUCT. WOULD APPRECIATE DEPARTMENT'S VIEWS ON ACCURACY OF MEXICAN VIEW THAT ITS PROPOSED TEXT WOULD NOT CREATE LOOPHOLE FOR NLM'S AND
CONFIDENTIAL

CONFIDENTIAL

PAGE 03 USUN N 02602 160038Z

ON PRESENTATIONAL PROBLEMS WE SEE WITH MEXICAN TEXT IN ANYTHING LIKE ITS PRESENT FORM. IF MEXICAN DELEGATION CORRECT IN SUBSTANCE, MIGHT MORE ACCEPTABLE VARIATION BE REDRAFT OF PARAGRAPH 10 OF FRG TO EFFECT THAT, IN CASE OF OVERLAP, GENEVA PROTOCOL WILL PREEMPT THIS CONVENTION. SIMILAR RESULT MIGHT ALSO BE ACHIEVED BY EXCLUSION FROM AMBIT OF CONVENTION OF ACTS COMMITTED IN CONTEXT OF INTERNATIONAL ARMED CONFLICT.
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